

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

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Date:

April 23, 2010

Legend:

Fund 1 =

Fund 2 =

Fund 3 =

Fund 4 =

Fund 5 =

Fund 6 =

Fund
Manager =

Trust 1 =

Trust 2 =

State =

Country =

Index =

p =

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Dear :

This responds to your request dated October 22, 2009, and supplemental correspondence dated April 14, 2010, submitted by your authorized representative on behalf of Fund 1, Fund 2, Fund 3, Fund 4, Fund 5, and Fund 6 (each a “Fund,” and collectively, the “Funds”). Funds request that the Internal Revenue Service rule that: 1) income and gain arising from the commodities-linked notes described in this letter will constitute qualifying income to the Funds under section 851(b)(2) of the Internal Revenue Code of 1986, as amended (the Code); and 2) that income earned from the ownership of a wholly-owned subsidiary that is a controlled foreign corporation (CFC) constitutes qualifying income to the Funds under section 851(b)(2).

FACTS

Funds are sponsored by Fund Manager. Fund 1, Fund 2 and Fund 3 are each a separate series of Trust 1, a State statutory trust. Fund 4, Fund 5, and Fund 6 are each a separate series of Trust 2, a State statutory trust. Each Fund either has elected or will elect to be taxable as a regulated investment company (RIC) under Subchapter M of the Code. Trust 1 and Trust 2 are each a registered investment company under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., as amended (the “1940 Act”), and each trust currently qualifies as a RIC under Subchapter M of the Code. Each Fund is (or will be) operated as an open-end management company.

Pursuant to its investment objective or strategy, each Fund is permitted to invest in either certain structured notes or in a wholly-owned foreign corporation that will in turn

invest in commodity and financial futures, swaps, options contracts, and also fixed income securities that would serve as collateral for those contracts. The wholly-owned foreign corporation may also invest in cash-settled non-deliverable forward contracts.

Commodities-linked Notes

Funds intend to pursue their investment objectives and strategies, in part, by investing in commodities-linked notes having the terms and conditions of the following note (the Note): The Note has a par value of \$p. Its payout formula is determined with reference to the Index. Its term is one year and one day. The Note will pay a monthly coupon with an interest rate equal to q. Fund, as holder of the Note, will have the right to put the Note to the issuer at the calculated redemption price based on the closing Index level as of the end of the next business day after notification to the issuer. In addition, if on any day, the Index falls to a level that is equal to or more than r% below the beginning Index level, the Note will “knockout” and automatically redeem based on the closing Index level of the next business day on which trading is generally conducted with respect to the components of the Index.

The repayment obligation upon early redemption, knockout, or at maturity equals the face amount of the Note plus or minus the following adjustment. In calculating the adjustment, the face amount of the Note is multiplied by (A) a leverage factor of s, and by (B) the percentage of the increase or decrease of the beginning Index level compared to the ending Index level for the applicable period. The total is then adjusted to account for a coupon amount calculated at a rate equal to q times the face amount of the Note, and for an annual fee of t basis points of the notional value (leveraged face amount) of the Note, and for the reversal of the interest factor included in the Index.

Each Fund makes the following representations with respect to the Note:

(1) The issuer of the Note will receive payment for the Note substantially contemporaneously with the delivery of the Note;

(2) A Fund while holding the Note will not be required to make any additional payments to the issuer of the Note in addition to the purchase price paid for the Note, whether as margin, settlement payment, or otherwise, during the life of the Note or at maturity;

(3) The issuer of the Note is not subject by the terms of the Note to mark-to-market margining requirements of the Commodities Exchange Act, 7 U.S.C. 2, as amended (the “CEA”); and

(4) The Note is not marketed as a contract of sale of a commodity for future delivery (or option on such a contract) subject to the CEA.

Controlled Foreign Corporation

Each Fund intends to form a wholly-owned subsidiary (each a “Subsidiary,” and collectively the “Subsidiaries”). Each Fund will own 100 percent of the vote and value of their respective Subsidiary. Each Subsidiary will be wholly owned by its respective Fund and, as such, the Funds represent that the Subsidiaries are expected to be classified as controlled foreign corporations (CFCs), as defined in section 957 of the Code. Each Fund will include its “Subpart F” income attributable to its Subsidiary under the rules applicable to CFCs under the Code.

Each Subsidiary will be incorporated as an exempted limited company under the laws of Country. Under the laws of Country, an exempted limited company provides for limited liability for all holders of shares. A shareholder’s liability is limited to the amount, if any, unpaid with respect to the shares acquired by the shareholder. Each Subsidiary will file an election on Form 8832, Entity Classification Election, to be taxed as a corporation for federal income tax purposes pursuant to section 301.7701-3 of the Procedure and Administration Regulations.

The Funds represent that, although the Subsidiaries will not be registered as investment companies under the 1940 Act, each Subsidiary will comply with the requirements of section 18(f) of the 1940 Act, Investment Company Act Release No. 10666, and related SEC guidance pertaining to asset coverage with respect to transactions in commodity index swap agreements and other transactions in derivatives.

Each Fund will invest a portion of its assets in its Subsidiary, subject to the limitations set forth in section 851(b)(3) of the Code. A Subsidiary may invest in one or more of the following types of instruments: commodity and financial futures and options contracts (and fixed income securities that serve as collateral for such contracts); deliverable forward and cash settled non-deliverable forward contracts. Each of these contracts may be linked to the performance of one or multiple commodities (including a commodity index). A Subsidiary may also invest in swaps on commodities or commodities indexes or in commodity-linked structured notes. Subsidiaries may also invest directly in commodities. It is expected that all of Subsidiaries’ income will be Subpart F income as defined in section 952.

LAW AND ANALYSIS

Section 851(b)(2) of the Code provides that a corporation shall not be considered a RIC for any taxable year unless it meets an income test (the “qualifying income requirement”). Under this test, at least 90 percent of its gross income must be derived from certain enumerated sources. Section 851(b)(2) defines qualifying income, in relevant part, as—

dividends, interest, payments with respect to securities loans (as defined in section 512(a)(5)), and gains from the sale or other disposition of stock or securities (as defined in section 2(a)(36) of the 1940 Act) or foreign currencies, or other income (including but not limited to gains from options, futures or forward contracts) derived with respect to [the RIC's] business of investing in such stock, securities, or currencies

Section 2(a)(36) of the 1940 Act defines the term “security” as—

any note, stock, treasury stock, security future, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas, or other mineral rights, any put, call, straddle, option, or privilege on any security (including a certificate of deposit) or on any group or index of securities (including any interest therein or based on the value thereof), or any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency, or, in general, any interest or instrument commonly known as a “security”, or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing.

Section 2(f)(1) of the CEA provides that the CEA is not applicable to a hybrid instrument that is predominantly a security. Section 2(f)(2) of the CEA provides that a hybrid instrument shall be considered to be predominantly a security if—

(A) the issuer of the hybrid instrument receives payment in full of the purchase price of the hybrid instrument, substantially contemporaneously with the delivery of the hybrid instrument;

(B) the purchaser or holder of the hybrid instrument is not required to make any payment to the issuer in addition to the purchase price paid under subparagraph (A), whether as margin, settlement payment, or otherwise, during the life of the hybrid instrument or at maturity;

(C) the issuer of the hybrid instrument is not subject by the terms of the instrument to mark-to-market margining requirements; and

(D) the hybrid instrument is not marketed as a contract of sale of a commodity for future delivery (or option on such a contract) subject to the CEA.

Section 2(f)(3) of the CEA provides, in part, that for purposes of section 2(f)(2)(C) of the CEA, mark-to market margining requirements do not include the obligation of an issuer of a secured debt instrument to increase the amount of collateral held in pledge

for the benefit of the purchaser of the secured debt instrument to secure the repayment obligations of the issuer under the secured debt instrument.

In addition, the flush language of section 851(b) of the Code further provides that, for purposes of section 851(b)(2), there shall be treated as dividends amounts included in gross income under section 951(a)(1)(A)(i) or 1293(a) for the taxable year to the extent that, under section 959(a)(1) or 1293(e) (as the case may be), there is a distribution out of the earnings and profits of the taxable year that are attributable to the amounts so included.

Section 957 of the Code defines a controlled foreign corporation (CFC) as any foreign corporation in which more than 50 percent of (1) the total combined voting power of all classes of stock entitled to vote, or (2) the total value of the stock is owned by United States shareholders on any day during the corporation's taxable year. A United States shareholder is defined in section 951(b) as a United States person who owns 10 percent or more of the total combined voting power of all classes of stock of a foreign corporation. Each Fund represents that it is a United States person within the meaning of section 957 and that it will satisfy the ownership requirements in section 957. Therefore, each Fund represents that its Subsidiary will qualify as a CFC under these provisions.

Section 951(a)(1) of the Code provides in relevant part that, if a foreign corporation is a CFC for an uninterrupted period of 30 days or more during any taxable year, every person who is a United States shareholder of this corporation and who owns stock in this corporation on the last day of the taxable year in which the corporation is a CFC shall include in gross income the shareholder's pro rata share of the CFC's subpart F income for the taxable year.

Section 952(a)(2) of the Code defines subpart F income to include foreign base company income determined under section 954. Under section 954(a)(1), foreign base company income includes foreign personal holding company income determined under section 954(c). Under section 954(c)(1), foreign personal holding company income includes (among other things): dividends, interest, royalties, rents, and annuities; gains in excess of losses from transactions in commodities (including futures, forward, and similar transactions but excluding certain hedging transactions and certain active business gains and losses); and, subject to certain exceptions, net income from notional principal contracts.

The Subsidiaries' investments in commodity and financial futures, swaps, cash-settled non-deliverable forward contracts, option contracts, fixed income securities, and other securities may generate foreign personal holding company income, which is subpart F income under section 954(c) of the Code. Each Fund will therefore include in income its pro rata share of its Subsidiary's subpart F income for the taxable year in accordance with section 951.

CONCLUSION

Based on the facts as represented, we rule that income and gain arising from the Note constitutes qualifying income to the Funds under section 851(b)(2) of the Code. We further rule that the subpart F income of the Subsidiaries attributable to the Funds is income derived with respect to each Fund's business of investing in the stock of its Subsidiary corporation and thus constitutes qualifying income under section 851(b)(2).

No opinion is expressed as to whether each Fund qualifies as a RIC that is taxable under subchapter M, part I of the Code. This ruling is directed only to the taxpayers who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Susan Thompson Baker
Susan Thompson Baker
Senior Technician Reviewer, Branch 2
Office of the Associate Chief Counsel
(Financial Institutions & Products)